THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11682 OF 2006

DATED: 24TH July, 2006.

Between :

1. Bharat Sanchar Nigam Limited, rep. by its General Manager Telecom, Adilabad, And another. … Petitioners

And

1. The Assistant Provident Fund Commissioner, EPF Organisation, Karimnagar and 2 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11682 OF 2006

ORDER:

Bharat Sanchar Nigam Limited (BSNL) filed this writ petition seeking a declaration that the orders passed by the 1st respondent – Assistant Provident Fund Commissioner, Karimnagar, dated 7-4-2006 and 9-5-2006 under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act') determining the amounts payable by the BSNL under Section 7-A of the Act as well as the interest under Section 7-Q of the Act as arbitrary and illegal.

It is not in dispute that the 1st petitioner – BSNL entrusted certain works like digging of trenches and providing security to the telecom stores, being part of providing telecom services, on contract basis by inviting tenders. It is stated that the duration of such contracts is one year depending upon the exigencies of the work and the BSNL has no control over the labour engaged by the contractor and the payment of wages to the labour have never been supervised by the BSNL at any time. While so, the 1st respondent initiated proceedings under Section 7-A of the Act on the ground that the PF contributions and administrative charges have not been remitted in respect of contract employees engaged through M/s. B. Padmavathi for the period from September, 2005 to January, 2006 and that the statutory returns have not been filed in relation to the said employees. An order dated 7-4-2006 was passed by the 1st respondent to the said effect calling upon

the 1st petitioner - BSNL to remit a sum of Rs.1,01,010/- towards PF contributions together with interest at 12% p.a. under Section 7-Q of the Act within ten (10) days. The 2nd petitioner by letter dated 4-5-2006 informed the 1st respondent that the BSNL cannot be made liable in respect of the contract labour and requested to allot a separate code and account number in the name of the contractor. The respondents were also informed that a sum of Rs.1,01,010/- was kept in suspense from the amount payable to the contractor. However, the 1st respondent issued a prohibitory order dated 5-5-2006 under Section 8-F of the Act directing the 3rd respondent - State Bank of Hyderabad, Adilabad to withhold a sum of Rs.1,04,218/- from the account of the BSNL and remit the same to the 1st respondent. That apart, by letter dated 9-5-2006 the 1st respondent informed the 2nd petitioner – General Manager (Maintenance), BSNL, Hyderabad that the request of the BSNL for allotment of Code number to the contractor has been turned down and since an order under Section 7-A of the Act has already been passed on 7-4-2006 the amount due shall be remitted within five days failing which coercive steps will be taken to recover the dues from the principal employer i.e., M/s. BSNL, Adilabad. In the meanwhile, the petitioner filed a Review Petition on 3-5-2006 to review the order made under Section 7-A of the Act. While keeping the said application pending, the 1st respondent resorted to coercive steps which are impugned in this writ petition.

The petitioners primarily contended that the BSNL cannot be made liable in respect of the PF contributions payable to the contract labour. It is also specifically pleaded that so far as the employees directly recruited by the BSNL, the PF contributions are being remitted regularly under the code number allotted to BSNL. It is contended that so far as the labour engaged by the contractor are concerned, a separate code and account number ought to have been allotted and the BSNL cannot be made liable for the same.

In the counter-affidavit filed on behalf of the respondents 1 and 2, it is stated that the 1st petitioner is an establishment covered under the provisions of the Act. However, the fact that the 1st petitioner has been complying with the provisions of the Act insofar as its regular employees are concerned has not been disputed. It is alleged that the 1st petitioner failed to comply with the provisions of the Act insofar as the employees employed through a contractor by name M/s. B. Padmavathi. It is contended that being the principal employer the 1st petitioner is liable to comply with the provisions even in respect of contract labour since the definition of employee under Section 2(f) of the Act includes the persons employed through contractor. It is further stated that in spite of the summons served, the 1st petitioner failed to attend the enquiry under Section 7-A of the Act and therefore an ex parte order was passed on 7-4-2006 assessing the dues payable towards the contract labour. Since the petitioner failed to comply with the said order under Section 7-A of the Act, impugned orders were passed in accordance with law.

I have heard the learned Counsel for both the parties, and perused the material on record.

Whereas the learned Counsel for the respondents raised a preliminary objection as to the maintainability of the writ petition on the ground that an alternative remedy of appeal is available under Section 7-I of the Act against the order of assessment dated 7-4-2006, the learned Counsel for the petitioner while relying upon the decision of the Supreme Court in FOOD CORPORATION OF INDIA v. PROVIDENT FUND COMMISSIONER[1] contended that the impugned order dated 9-4-2006 being ex facie illegal is liable to be set aside.

On a perusal of the material available on record, it is clear that before making the assessment under Section 7-A of the Act, no notice was issued to the contractor M/s. B. Padmavathi and the particulars of

the employees engaged by the contractor as well as the wages paid to them were not made available from the records of the contractor. Though the 1st petitioner – BSNL has been contending that it has no control over the employees engaged by the contractor and therefore it cannot be made liable in respect of the contract labour and that the contractor may be allotted a separate account number, admittedly the BSNL did not participate in the enquiry under Section 7-A of the Act. Even from the counter-affidavit filed by the 1st respondent, it is clear that the assessment order dated 7-4-2006 was only an ex parte order. A perusal of the said order shows that the said order was passed merely on the basis of the report submitted by the Enforcement Officer.

In FOOD CORPORATION OF INDIA'S case (1 supra) while considering a question whether the liability can be fixed on the principal employer without issuing summons to the contractor who engaged the employees, the Supreme Court observed that it would be failure to exercise the jurisdiction conferred on the Commissioner under the Act to collect all evidence before coming to proper conclusion, particularly when a party to the proceedings requests for summoning evidence from a particular person.

Having regard to the facts and circumstances of the case, since admittedly no notice was issued to the contractor who actually engaged the workers and particularly since the impugned order was an ex parte order which was passed without taking into consideration the contention of the petitioners that the principal employer cannot be made liable for the PF contributions towards the contract labour, I deem it appropriate to direct fresh enquiry to meet the ends of justice.

Accordingly, the impugned order dated 7-4-2006 as well as the consequential orders dated 5-5-206 and 9-5-2006 are set aside and the Writ Petition is disposed of with a direction to the 1st respondent to pass appropriate order afresh in accordance with law after issuing notice to the contractor who engaged the contract labour. The 1st

petitioner is granted liberty to submit its explanation both on facts and law within a period of two weeks from the date of receipt of this order. It is made clear that the 1st petitioner shall appear before the 1st respondent on the date fixed for enquiry without fail and co-operate for expeditious conclusion of the enquiry.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 24-7-2006
gbs

[1] (1990) 1 Supreme Court Cases 68